

Staff Report

This staff report describes the violations by the Hanes Ranch Inc., and John Hanes, President of Hanes Ranch Incorporated (hereinafter referred to as the Dischargers), of the Porter-Cologne Water Quality Control Act and the Water Quality Control Plan for the North Coast Region (Basin Plan), including violations of the Action Plan for Logging, Construction, and Associated Activities. The Basin Plan prohibits the discharge to, or placing or disposal of soil, silt, and other organic earthen material from logging, construction, and other associated activities where it may pass into, any stream or watercourse in the basin in amounts deleterious to the beneficial uses. This report also describes the subsequent violations of requirements by the North Coast Regional Water Quality Control Board Executive Officer to submit technical reports and cleanup and abate sediment discharges per California Water Code (CWC) Sections 13267(b) and 13304(a). These violations have ultimately led to the Executive Officer's decision to pursue this administrative civil liability action against the Dischargers.

Timber Harvest Plan History

The Dischargers own and control more than 5,000 acres of private timberland in the Navarro and Garcia River watersheds. The Dischargers are responsible for overseeing and conducting management activities and other activities within the ownership such as timber harvesting, forestry management, recreation activities, road construction, watercourse crossing construction, road maintenance, and erosion control maintenance. During the summer of 2002, the Dischargers submitted Timber Harvest Plans (THPs) 1-02-118 MEN, 1-02-175 MEN and 1-02-155 MEN to the California Department of Forestry & Fire Protection (CDF) for portions of the ownership in the Navarro River watershed.

Regional Water Board staff conducted five pre-harvest inspections (PHI) of the area associated with the aforementioned THPs (hereinafter the "Property") during June, July, August, and September of 2002. During the inspections, staff observed Basin Plan violations including the discharge of earthen material from watercourse crossings, road fill failures, inadequate road drainage, watercourse diversions, watercourse crossing failures, sidecast fill material, and numerous surface erosion sites, into Minnie Creek, Big Rough Creek, Camp Creek, Rancheria Creek, German Creek and their tributaries within the Navarro River watershed.

During and subsequent to the inspections, Regional Water Board staff informed the Discharger and his representative, the Registered Professional Forester (RPF) who prepared the THPs, of the observed violations of the Basin Plan. Regional Water Board staff attempted to work through the THP review process by requesting that the Dischargers prepare and incorporate into the THPs an erosion control plan to address the observed Basin Plan violations.

During and subsequent to the inspections, Regional Water Board staff met with and informed the Dischargers' RPF of the appropriate contents of an adequate erosion control plan, and suggested various methods and sources of information that could be consulted in the preparation of an adequate erosion control plan. The RPF submitted several versions of a road management plan for review during subsequent pre-harvest inspections. The road management plan was determined to be inadequate by the Regional Water Board staff, the CDF, and the California Geological Survey (CGS) in addressing the numerous erosion sites and road drainage problems. The RPF stated that he was unable to produce an adequate erosion control plan, in part, due to the Dischargers' refusal to design, maintain, and construct roads utilizing currently accepted erosion control practices.

In the limited efforts to address observed erosion problems, the Dischargers have failed to demonstrate the use of adequate erosion control practices. On October 25, 2002, the Dischargers sent a letter to Regional Water Board staff (This and all related correspondence between the Dischargers and Regional Water Board staff is herein attached to the staff report). In the letter, the Dischargers categorically denied violating the Basin Plan prohibitions. However, the Dischargers stated in this letter that new culverts had only been "partially installed" at nine locations early in the Spring of 2002, but "the soil was too wet to complete installation at that time." This indicates that the Dischargers were operating in the wet season. Using proper and effective erosion control practices requires the avoidance of heavy equipment operations during wet periods, due to the likelihood of causing or compounding discharges or threatened discharges of waste to waters of the state in violation of the Basin Plan.

All of the THPs on the Property for which pre-harvest inspections were conducted between June and September, 2002, were either withdrawn by the RPF or denied by the CDF as incorrect, incomplete or misleading in a material way, insufficient to evaluate significant environmental effects, or would result in a violation of the Basin Plan.

Cleanup and Abatement and Request for Technical Reports Order

Based upon the unresolved earthen material discharges and threatened discharges on the Property, on October 18, 2002 the Regional Water Board Executive Officer issued to the Dischargers Cleanup and Abatement and Request for Technical Reports Order No. R1-2002-0102 (hereinafter referred to as the CAO) for the Property. The CAO was issued by the Regional Water Board Executive Officer pursuant to CWC Sections 13304 and 13267. The CAO required the Dischargers to complete the following work:

- ♦ Implement Short-Term Emergency Erosion Control measures by November 8, 2002.
- ♦ By November 15, 2002, submit a Short-Term Erosion Control Completion Report (STCR). The STCR was to describe, photograph, and map the locations where erosion control measures were implemented.
- ♦ Conduct monitoring inspections of the measures identified in the STCR throughout the November 2002 to May 2003 winter period under the supervision of a California licensed professional engineer or geologist experienced in erosion control.
- ♦ Provide notification of the day of each inspection to Regional Water Board staff, to allow them to attend and potentially collect water quality samples.
- ♦ Submit monthly monitoring reports by the 15th day of each calendar month (November through May). The monthly monitoring reports are designed to ensure effectiveness and maintenance of emergency erosion control measures, as well as to document any new erosional features, throughout the winter period.
- ♦ By January 15, 2003, submit a long-term erosion control plan (ECP) for the Property. The ECP was required to include a sediment source inventory, a landslide investigation report, and a remediation plan.
- ♦ By August 1, 2003, implement the remediation plan for permanent mitigation of potential and chronic sediment delivery sites.
- ♦ By September 1, 2003, submit a completion report, prepared by California licensed professional engineer or geologist, documenting complete implementation of the ECP.

The Dischargers failed to submit a STCR to the Executive Officer by November 15, 2002. On November 17, 2002, the Dischargers submitted a "Progress Report." The letter did not provide the information required by the CAO for either the STCR or the monthly monitoring report.

The Dischargers did not notify Regional Water Board staff of any of the required inspection(s) during the months of November, December, January, February, March, and April. Regional Water Board staff has not received any indication that any of the inspections required by the CAO were conducted.

The Dischargers did not submit the monthly monitoring reports due by the 15th day of November, December, January, February, March, April and May.

The Dischargers failed to submit the ECP by the date specified in the CAO and have not submitted the ECP as of this date.

On January 22, 2003, while accompanying the CDF on a timber harvest completion inspection, Regional Water Board staff accessed a portion of the roads that are part of the Property. At that time, Regional Water Board staff observed that short-term emergency erosion control measures had not been implemented in the area inspected. Regional Water Board staff informed the Dischargers of the status of non-compliance with the CAO and requested permission to inspect the Property to evaluate compliance with the CAO. Mr. Hanes indicated that he believed that inspection of the site was not important and that site conditions prevented access for both monitoring and inspections in portions of the area covered by the CAO.

On February 11, 2003, the Executive Officer sent a letter informing the Dischargers of the status of non-compliance with the CAO. The letter also requested permission to access the Property by February 18, 2003, to investigate compliance with the CAO. The February 11, 2003 letter stated that if permission for access was not granted, steps would be taken pursuant to section 13267(c) of the CWC to obtain a search warrant to inspect the Property. The Dischargers did not grant permission to access the Property.

On February 25, 2003, the Executive Officer received a letter from the Dischargers, responding to the February 11, 2003 letter. In the letter, the Dischargers disputed the CAO, stating that "the Cleanup and Abatement Order was unnecessary." The Dischargers indicated that treatment of areas of concern had been done as part of normal maintenance on the Property, but did not submit the documentation nor meet the requirements of the STCR described in the CAO. The Dischargers also disputed the reporting of the information required in the CAO, asserting that it was in conflict with their rights guaranteed by the U.S. constitution. Furthermore, the Dischargers' letter did not mention staff's request for access to inspect the Property.

On February 25, 2003, Regional Water Board staff spoke with Mr. Hanes in person, and once again requested an agreeable date for inspection of the Property. After denying Regional Water Board staff access, Mr. Hanes was informed that an inspection warrant would be sought to provide legal access to the Property, as stated in the February 11, 2003 letter.

On March 26, 2007, Mendocino County Superior Court Judge Richard Hendersen, issued an inspection warrant for the Regional Water Board staff to inspect the areas of the Property described in the CAO. Regional Water Board staff notified the Dischargers by telephone on

March 26, 2003 of the inspection warrant and stated that the inspection of the Property would begin on April 1, 2003. The Dischargers were also informed that a copy of the inspection warrant had been delivered to their post office box.

On April 1 and 2, 2003, staff from the Regional Water Board, the CDF, the California Department of Fish and Game, and a Mendocino County Deputy Sheriff, participated in one or both days of the inspection of the Property, pursuant to the terms of the inspection warrant. During the two days of inspection, Regional Water Board staff evaluated the Property for compliance with the CAO. Conduct of the inspection by vehicles or on foot allowed for unrestricted access to all areas associated with the CAO. Additionally, erosion sites were measured and previous, as well as threatened, discharges of sediment to waters of the state were estimated. Photographic evidence was also collected to show erosion that occurred during the 2002-2003 winter period as well as past discharge locations.

Regional Water Board staff identified some locations where the Dischargers had implemented emergency erosion control measures. The majority of the emergency erosion control measures implemented were in the form of grass seed and mulch on isolated areas of exposed soils and installation of waterbars. Where emergency erosion control measures were implemented, they appeared to be largely ineffective at controlling sediment discharges to waters of the state. Some improperly implemented erosion control work appeared to exacerbate the discharge of sediment to waters of the state.

Several of the erosional features identified during the initial pre-harvest inspections were observed to have enlarged during the winter months and resulted in continuing discharges of sediment to waters of the state. A conservative estimate of the volume of sediment from 70 identified erosion sites delivered to waters of the state and inspected by Regional Water Board staff on April 1 and 2, 2003 was estimated to exceed 500 cubic yards. A minimum of 50 cubic yards of sediment is estimated to have been delivered to waters of the state during the winter 2002-2003. The estimated volume of 500 cubic yards, or approximately 100,000 gallons of waste have been discharged from the Property into waters of the state.

Conclusion

Inspections of the Dischargers' Property revealed significant sources of sediment that are actively eroding or have potential to erode into the Navarro River watershed. Regional Water Board staff attempted to work with the Dischargers through the CDF's timber harvest review process to mitigate the discharges that have occurred and are threatened to occur on the Property. Staff continued to try to work with the Dischargers through the CAO. These attempts failed due to the Dischargers' refusal to adequately address sediment sources on the Property.

Under the authority granted through the CWC, the Executive Officer issued a Cleanup and Abatement and Request for Technical Reports Order to the Dischargers.

An inspection warrant was obtained to evaluate the Dischargers' efforts to mitigate sediment sources on the Property. During the inspection it was evident that the Dischargers had not properly implemented erosion control measures as specified in the CAO. Without a properly implemented erosion control plan, significant sources of sediment will remain unmitigated and will continue to deliver significant volumes of sediment into the sediment-impaired watershed of

the Navarro River during future rain events. The CAO requires that the Dischargers implement the remediation plan by August 1, 2003. The remediation plan is that part of the Long-Term Erosion Control Plan (ECP) that implements “permanent mitigations” to address potential and chronic sediment delivery from the locations identified in the sediment source inventory portion of the ECP.

Section 13268 of the CWC provides for the imposition of civil liabilities of up to \$1000 per day against the Dischargers for failing to furnish technical or monitoring reports. The Dischargers have accrued 1366 days of violation up through July 1, 2003 for lack of submittal of the STCR, ECP, and November 2002 through May 2003 monthly monitoring reports. In addition, the dischargers have failed to conduct and/or provide notification of six required inspections triggered by large rainfall events. The maximum potential civil liability for 1372 days of violations described above is \$1,372,000.

Section 13350 of the CWC provides for the imposition of civil liabilities against the Dischargers for failing or refusing to comply with a cleanup and abatement order up to \$5000 per day or ten dollars per gallon of waste discharged. The conservatively estimated volume of 500 cubic yards, or approximately 100,000 gallons of waste that have been discharged from the Property into waters of the state represents an additional maximum potential civil liability of \$1,000,000, based on ten dollars per gallon.

To date, the Dischargers have failed to comply with the Cleanup and Abatement and Request for Technical Reports Order. Due to the refusal and failure to comply with the CAO, the Executive Officer issued Administrative Civil Liability Complaint R1-2003-0081 to the Dischargers for the amount of \$100,000. The imposition of administrative civil liability as requested by the Complaint is necessary in order to address past non-compliance, deter future violations, and ensure that appropriate and timely remediation of this Property will occur.